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59

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,754	03/30/2001	Matthew N. Schmid	CIG-101	5170
28970	7590	05/12/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN LLP 1650 TYSONS BOULEVARD MCLEAN, VA 22102			TRAN, ELLEN C	
			ART UNIT	PAPER NUMBER
			2134	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

47

Advisory Action
Before the Filing of an Appeal Brief

Application No.

09/821,754

Applicant(s)

SCHMID ET AL.

Examiner

Ellen C. Tran

Art Unit

2134

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2-21.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: no changes were made to the pending claims to distinguish the claimed invention from the references cited in the rejection. Also no arguments were presented, that would overcome the rejection, see below.

On pages 2-3, the applicant argues that the reference does not teach the preamble of claim 2 "A method for preventing process creation of an unauthorized user application executable by an operating system of a computer". The Office disagrees the reference is directed to a method of intrusion detection which includes a means to include prevention techniques these "prevention techniques" include 'preventing process creation'.

On pages 3-4, the applicant argues that the reference does not teach elements 2 and 4 of claim 2, "intercepting a request for execution of an application executable by a user using the substitute process creation function" and "comparing the information to a list of authorized executables for the user using the user-mode-application". The Office disagrees, applicant is reminded that the cited portion is merely a guide but the reference as a whole should be considered. The intrusion detection system of the reference clearly shows intercepting a request throughout the reference i.e. see col. 10, lines 11-30. Although the 'application executable' in this example is installing an updated database into the network security detector, the network security detector is an application executable. Likewise 'intercepting a request' is inherent in the installation process that first installs the software enhancement onto a separate storage device then performs checks to insure authentic software and user verification before unlocking any software enhancement.

On pages 5, the applicant argues that the reference does not teach element 3 of claim 2, "communicating information about the request from the substitute process creation function to a user-mode application running as a service". The Office disagrees this is shown in the reference the network security detector can send indication that an update process is available via e-mail (which is an application running as a service) see col. 8, lines 44-46..



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